

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

RP.No. 368 of 2007(E)

AGAINST THE JUDGEMENT IN OP.3408/2003 DT.27.9.2006
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REVIEW PETITIONER/PETITIONER

SURYA SAMUDRA HOLIDAY RESORT PVT. LTD.,
PULINKUDY, MULLUR P.O., THIRUVANANTHAPURAM-695521,
REPRESENTED BY ITS DIRECTOR.

BY ADV. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

RESPONDENTS: RESPONDENTS

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY (TAXES), KERALA GOVERNMENT,
SECRETARIAT, TRIVANDRUM.
2. THE REGIONAL TRANSPORT OFFICER,
TRIVANDRUM.
3. SALES TAX OFFICER,
NEYATTINKARA.
4. ASSISTANT REGIONAL TRANSPORT OFFICER,
NEYATTINKARA.

BY GOVERNMENT PLEADER SRI.R.LAKSHMI NARAYAN

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD
ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.BALAKRISHNAN NAIR, J.

R.P. NO.368/2007 IN

O.P.NO.3408 OF 2003-E

ORDER

The petitioner imported a vehicle and got it registered in Kerala. It was called upon to pay entry tax. The petitioner resisted the claim by relying on the decision of this Court in **Father William Fernandez v. State of Kerala** (115 STC 591). Since the respondents insisted payment, O.P.No.3408/2003 was filed before this Court. The said O.P was disposed of along with other Original Petitions, as per the judgment under review. The learned counsel for the petitioner, relying on the decision of the Apex Court in **Jindal Stainless Ltd. (2) v. State of Haryana** [(2006)7 SCC 241] submitted that the petitioner has no liability to pay entry tax for its imported vehicle. Reference is also made to the decision of the Division Bench of this Court in **Thressiamma L.Chirayil v. State of Kerala** [2007(1) KLT 303].

2. But, the learned Government Pleader for the respondents submitted that the decision in **Thressiamma's** case (supra) has not become final. The appeal filed against it has been entertained by the Supreme

Court. Therefore, as per the terms of the judgment under review, the bank guarantee furnished by the petitioner need be released, if only the dispute is finally settled.

3. Technically, the contention of the learned Government Pleader is correct. But, for all practical purposes, the point raised by the petitioner is covered in its favour. Therefore, I feel that the direction in the judgment should be modified appropriately. So, this review petition is disposed of, ordering that the bank guarantee furnished by the petitioner shall be released, on condition the petitioner along with two solvent sureties executes a bond in favour of the 3rd respondent, undertaking to pay the entry tax along with the statutory interest, if any due, if, ultimately, the decision is in favour of the State. On furnishing such a bond the bank guarantee furnished by the petitioner shall be released.

23rd November, 2007.

K.BALAKRISHNAN NAIR, JUDGE.

Nm/